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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,987	01/08/2001	Rodney Michell Innes	JAMES 46.001	8953

20995            7590            08/29/2003

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CLARDY, S

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1616

DATE MAILED: 08/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/673,987</b>	Applicant(s) <b>Innes</b>
Examiner <b>S. Mark Clardy</b>	Art Unit <b>1616</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Jun 19, 2003

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1, 2, 4, 6-9, 11, 12, 14, 16, 17, 19-25, 28-30, 32, 33, 35, 38-40, is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1, 2, 4, 6-9, 11, 12, 14, 16, 17, 19-25, 28-30, 32, 33, 35, 38-40, 42, is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1)  Notice of References Cited (PTO-892)

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

6)  Other: \_\_\_\_\_

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Claims 1, 2, 4, 6-9, 11, 12, 14, 16, 17, 19-25, 28-30, 32, 33, 35, 38-40, 42, 43, and 47-51 are pending in this RCE application which was originally filed under 35 USC 371 as a national stage application of PCT/NZ99/00047, filed April 21, 1999.

Applicants' claims are drawn to agrochemical compositions, methods of making them, and methods of use, comprising:

- a) monoterpenes<sup>1</sup> alcohol: a pine oil with at least 60% alcohol content
- b) a fatty acid soap: an alkali metal salt of a tall oil and/or a fatty acid,
- c) optional monocyclic monoterpene aldehydes, ketones, or other materials<sup>2</sup>,
- d) optional adjuvants and active agents<sup>3</sup>.

wherein there is sufficient fatty acid soap or foam enhancing agent to form a surface monolayer of bubbles when used.

Note that the end use recited at the end of claim 51 is irrelevant in a composition claim.

Claims 17 and 21 have been corrected.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 2 are again rejected under 35 U.S.C. 102(a), (b), and (e) as being anticipated by Comparative Example 1b of Barranx et al (US 5,763,468). While Barranx et al is nonanalogous art, and the cleaning compositions therein are not used for agricultural purposes, the cleaning compositions comprise the same components and are thus anticipatory, regardless of end use.

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<sup>1</sup>Claim 8: pinenes, terpineols, borneols, isoborneols, eucalyptus oil, citronellol, limonol, citrus oils

<sup>2</sup>Claim 9: anethols, fenchols, limonenes, camphenes, thujols, dipentes, eugenols, phellandrenes, cavracols

<sup>3</sup>Claim 17: surfactants, foaming agents, emulsifiers, pesticides fungicidal agents, and fertilizer

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Barranx et al, again, teaches disinfectant compositions comprising at least one terpene alcohol and at least one bactericidal acidic surfactant. Comparative Example 1b comprises 20% pine oil and 20% tall oil sodium fatty acid soap. The pine oils used in the patent have a terpenic alcohol content of 88-93% (col 5, lines 26-31), which would appear to be within applicant's range of above 60% or 80%. The composition of the comparative example 1b would inherently possess the characteristics described in functional language at the end of claim 1, i.e., the ability to foam because Barranx et al teaches the same components in the same concentration ranges. It thus follows that whatever properties have been noted in applicants' compositions are necessarily present in those disclosed in Barranx et al, whether explicitly disclosed or not. Again, it is noted that applicant's preferred ratio of tall oil to pine oil would not allow for equal amounts of these components; see page 19, lines 10-11.

Claims 1, 2, 4, 6-9, 11, 12, 14-17, 19, 21-25, 28-29, 47-51 are again rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Barranx et al and Richter (US 5,728,672). This rejection is based on non-analogous art cleaning compositions which comprise the same components as applicant's compositions. Again, there is no requirement that the prior art must suggest that the claimed product will have the same or similar utility as that discovered by applicant in order to support a legal conclusion of obviousness, so long as the prior art suggests a reason or provides motivation to make the claimed invention, even where the reason or motivation is based on something different from that discovered by applicant. None of applicants' pesticidal methods have been rejected over these references.

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The disinfectant compositions of Barranx et al has been discussed above. Richter, again, teaches pine oil (columns 2-3) cleaning compositions (Abstract) which may also contain anionic surface active agents including fatty acid ( $C_{8-20}$ ) salts (col 9, lines 24-28).

One of ordinary skill in the art would be motivated to combine these references because they disclose the utility of combining terpene or pine oil components with soap materials in disinfectants.

Thus, again, it would have been *prima facie* obvious to one of ordinary skill in the disinfecting composition art at the time the invention was made to have combined applicants' monoterpenes alcohol (pine oil) with a fatty acid soap because the prior art teaches that these components were known to be useful in combination as disinfectant compositions. The addition of other optional components (surfactants, emulsifiers, etc.) would have been obvious to the ordinary artisan in the disinfectant art. As noted above, such compositions would possess the ability to foam.

Claims 1, 2, 4, 6-9, 11, 12, 14-17, 19-25, 28-30, 32, 33, 35, 38-40, 42, 43, and 47-51 are again rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Pullen et al (US 5,753,593) and Evans et al (US 5,948,731).

Pullen et al, again, teach the utility of terpene oils such as pine oil and various citrus oils (col 2, lines 4-13), in combination with surfactants, preferably the salts of fatty acids (col 3, lines 14-20), as aquatic herbicidal agents. The alcohol content of the pine oil is at least 60% by weight; in column 2, Pullen states:

High terpine containing natural oil as used herein means those natural oils having a terpine content of at least fifty (50%) percent. It is preferable that the high terpine natural oil contains at least ninety (90%) percent.”

Thus, the pine oil component of Pullen falls within applicant's range of at least 60%.

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Evans et al, again, teach that fatty acid salts, as disclosed in Pullen et al, were known herbicidal agents.

One of ordinary skill in the art would be motivated to combine these references because Pullen et al discloses the utility of fatty acid salts in aquatic herbicidal compositions; Evans et al is used merely to show that the fatty acid salts were known to possess herbicidal activity.

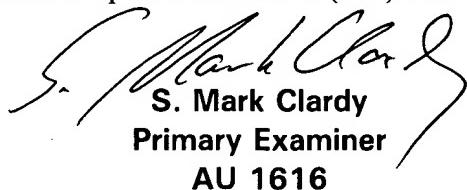
Thus, again, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' monoterpeno alcohol (pine oil) with a fatty acid soap because the prior art teaches that these components were known to be useful in herbicidal compositions. The addition of other optional components (surfactants, emulsifiers, etc.) would have been obvious to the ordinary artisan in the herbicidal art. Again, compositions comprising the components disclosed herein would necessarily produce foam.

Again, no unobvious or unexpected results are noted; no claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.

  
S. Mark Clardy  
Primary Examiner  
AU 1616

August 26, 2003